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Attorneys for Defendants JOSEPH P. MELEHAN,
and MAUREEN MELEHAN MACHADO

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SCOTT JOHNSON,
Plaintiff,
v.
JOSEPH P. MELEHAN, Trustee of the
Patricia Melehan Trust; MAUREEN
MELEHAN MACHADO, Trustee of the
Patricia Melehan Trust; and DOES 1-10,
inclusive,
Defendants.

) Case No. 5:16-cv-04064-HRL

)
) **DEFENDANTS' REQUEST FOR**
) **JUDICIAL NOTICE IN SUPPORT OF**
) **MOTION TO DISMISS PURSUANT TO**
) **FEDERAL RULES OF CIVIL**
) **PROCEDURE 12(b)(1) AND 12(b)(6)**

) Date: August 22, 2017
) Time: 10:00 a.m.
) Dept.: Courtroom 2, 5th Fl.
) Judge: Hon. Howard R. Lloyd

) Action Filed: July 19, 2016
) Trial Date: TBA

)
)

DEFENDANTS JOSEPH P. MELEHAN, and MAUREEN MELEHAN MACHADO,
Trustees of the Patricia Melehan Trust, respectfully submit the following Request for Judicial
Notice Pursuant to Federal Rule of Evidence 201:

<u>RJN NO:</u>	<u>DATE/ TITLE/CASE</u>	<u>EXHIBIT</u>
1	PLAINTIFF SCOTT JOHNSON'S COMPLAINT FILED JULY 19, 2016, EXCERPTED PAGES 4-8 1,	A

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2

PROOF OF SERVICE BY PUBLICATION FILED BY
PLAINTIFF

B

3
4 DATED: June 26, 2017

PAHL & McCAY
A Professional Law Corporation

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6
7 By: /s/ Sarahann Shapiro
Sarahann Shapiro, Esq.

8 Attorneys for Defendant
9 JOSEPH P. MELEHAN,
and MAUREEN MELEHAN MACHADO

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28
REQUEST FOR JUDICIAL NOTICE IN SUPPORT...

2

(Case No. 5:16-cv-04064-HRL)

1 CENTER FOR DISABILITY ACCESS
2 Ray Ballister, Jr., Esq., SBN 111282
3 Mark Potter, Esq., SBN 166317
4 Phyl Grace, Esq., SBN 171771
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6 Mail: PO Box 262490
7 San Diego, CA 92196-2490
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10 (858) 375-7385; (888) 422-5191 fax
11 phylg@potterhandy.com

12 Attorneys for Plaintiffs

13
14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17
18 **Scott Johnson,**
19 Plaintiff,
20 v.
21 **Joseph P. Melehan**, Trustee of the
22 Patricia Melehan Trust;
23 **Maureen Melehan Machado**,
24 Trustee of the Patricia Melehan
25 Trust; and Does 1-10,
26 Defendants.

27
28 **Case No.** 5:16-cv-04064-HRL

29
30 **Complaint For Damages And
31 Injunctive Relief For Violations
32 Of: American's With Disabilities
33 Act; Unruh Civil Rights Act**

34
35 Plaintiff Scott Johnson complains of Defendants Joseph P. Melehan;
36 Maureen Melehan Machado; and Does 1-10 ("Defendants"), and alleges as
37 follows:

38
39 **PARTIES:**

40
41 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
42 level C-5 quadriplegic. He cannot walk and also has significant manual
43 dexterity impairments. He uses a wheelchair for mobility and has a specially
44 equipped van.

1 **FACTUAL ALLEGATIONS:**

2 30. The Shopping Center is a facility open to the public, a place of public
3 accommodation, and a business establishment.

4 22. Parking spaces are one of the facilities, privileges and advantages
5 offered by Defendants to patrons of the Shopping Center.

6 23. Unfortunately, the parking lot serving the Shopping Center is not
7 accessible to persons with disabilities.

8 24. In March 2015, there was one standard disabled parking space at the
9 Shopping Center.

10 25. In March 2015, there was no van accessible parking space at the
11 Shopping Center.

12 26. In March 2015, Defendants failed to maintain the parking spaces in
13 compliance with the Americans with Disabilities Act Accessibility Guidelines
14 (ADAAG).

15 27. In March 2015, the standard disabled space measured less than 216
16 inches in length.

17 28. In March 2015, the standard disabled parking space did not have the
18 required "Minimum Fine \$250" signage.

19 29. In March 2015, the standard disabled parking space did not have the
20 required tow-away signage.

21 30. In March 2015, the standard disabled space did not have the required
22 adjacent access aisle.

23 31. In March 2015, the standard disabled space was not located closest to
24 the accessible entrance it served.

25 32. In April 2015, there was one standard disabled parking space at the
26 Shopping Center.

27 33. In April 2015, there was no van accessible parking space at the Shopping
28 Center.

1 34. In April 2015, Defendants failed to maintain the parking spaces in
2 compliance with the ADAAG.

3 35. In April 2015, the standard disabled space measured less than 216
4 inches in length.

5 36. In April 2015, the standard disabled parking space did not have the
6 required "Minimum Fine \$250" signage.

7 37. In April 2015, the standard disabled parking space did not have the
8 required tow-away signage.

9 38. In April 2015, the standard disabled space did not have the required
10 adjacent access aisle.

11 39. In April 2015, the standard disabled space was not located closest to the
12 accessible entrance it served.

13 40. In May 2015, there was one standard disabled parking space at the
14 Shopping Center.

15 41. In May 2015, there was no van accessible parking space at the Shopping
16 Center.

17 42. In May 2015, Defendants failed to maintain the parking spaces in
18 compliance with the ADAAG.

19 43. In May 2015, the standard disabled space measured less than 216
20 inches in length.

21 44. In May 2015, the standard disabled parking space did not have the
22 required "Minimum Fine \$250" signage.

23 45. In May 2015, the standard disabled parking space did not have the
24 required tow-away signage.

25 46. In May 2015, the standard disabled space did not have the required
26 adjacent access aisle.

27 47. In May 2015, the standard disabled space was not located closest to the
28 accessible entrance it served.

1 48. In June 2015, there was one standard disabled parking space at the
2 Shopping Center.

3 49. In June 2015, there was no van accessible parking space at the Shopping
4 Center.

5 50. In June 2015, Defendants failed to maintain the parking spaces in
6 compliance with the ADAAG.

7 51. In June 2015, the standard disabled space measured less than 216
8 inches in length.

9 52. In June 2015, the standard disabled parking space did not have the
10 required "Minimum Fine \$250" signage.

11 53. In June 2015, the standard disabled parking space did not have the
12 required tow-away signage.

13 54. In June 2015, the standard disabled space did not have the required
14 adjacent access aisle.

15 55. In June 2015, the standard disabled space was not located closest to the
16 accessible entrance it served.

17 56. In February 2016, there was one standard disabled parking space at the
18 Shopping Center.

19 57. In February 2016, there was no van accessible parking space at the
20 Shopping Center.

21 58. In February 2016, Defendants failed to maintain the parking spaces in
22 compliance with the ADAAG.

23 59. In February 2016, the standard disabled space measured less than 216
24 inches in length.

25 60. In February 2016, the standard disabled parking space did not have the
26 required "Minimum Fine \$250" signage.

27 61. In February 2016, the standard disabled parking space did not have the
28 required tow-away signage.

1 62. In February 2016, the standard disabled space did not have the required
2 adjacent access aisle.

3 63. In February 2016, the standard disabled space was not located closest
4 to the accessible entrance it served.

5 64. In March 2016, there was one standard disabled parking space at the
6 Shopping Center.

7 65. In March 2016, there was no van accessible parking space at the
8 Shopping Center.

9 66. In March 2016, Defendants failed to maintain the parking spaces in
10 compliance with the ADAAG.

11 67. In March 2016, the standard disabled space measured less than 216
12 inches in length.

13 68. In March 2016, the standard disabled parking space did not have the
14 required "Minimum Fine \$250" signage.

15 69. In March 2016, the standard disabled parking space did not have the
16 required tow-away signage.

17 70. In March 2016, the standard disabled space did not have the required
18 adjacent access aisle.

19 71. In March 2016, the standard disabled space was not located closest to
20 the accessible entrance it served.

21 72. In April 2016, there was one standard disabled parking space at the
22 Shopping Center.

23 73. In April 2016, there was no van accessible parking space at the Shopping
24 Center.

25 74. In April 2016, Defendants failed to maintain the parking spaces in
26 compliance with the ADAAG.

27 75. In April 2016, the standard disabled space measured less than 216
28 inches in length.

1 76. In April 2016, the standard disabled parking space did not have the
2 required "Minimum Fine \$250" signage.

3 77. In April 2016, the standard disabled parking space did not have the
4 required tow-away signage.

5 78. In April 2016, the standard disabled space did not have the required
6 adjacent access aisle.

7 79. In April 2016, the standard disabled space was not located closest to the
8 accessible entrance it served.

9 80. Currently, there is one standard disabled parking space at the Shopping
10 Center.

11 81. Currently, there is no van accessible parking space at the Shopping
12 Center.

13 82. Currently, Defendants fail to maintain the parking spaces in compliance
14 with the ADAAG.

15 83. Currently, the standard disabled space measures less than 216 inches in
16 length.

17 84. Currently, the standard disabled parking space does not have the
18 required "Minimum Fine \$250" signage.

19 85. Currently, the standard disabled parking space does not have the
20 required tow-away signage.

21 86. Currently, the standard disabled space does not have the required
22 adjacent access aisle.

23 87. Currently, the standard disabled space is not located closest to the
24 accessible entrance it serves.

25 88. Plaintiff visited Shopping Center twice in March 2015 to shop at Fast
26 Signs.

27 89. Plaintiff visited Shopping Center in April 2015 to shop at Fast Signs.

28 90. Plaintiff visited Shopping Center twice in May 2015 to shop at Fast

San Jose Mercury News

4 N. 2nd Street, Suite 800
San Jose, CA 95113
408-920-5332

3708504

POTTER HANDY, LLP
PO BOX 262490
SAN DIEGO, CA 92196-2490

PROOF OF PUBLICATION IN THE CITY OF SAN JOSE IN THE STATE OF CALIFORNIA COUNTY OF SANTA CLARA

FILE NO. 5:16-cv-04064 HRL

In the matter of

San Jose Mercury News

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to or interested in the above entitled proceedings; and was at and during all said times and still is the principal clerk of the printer and publisher of the San Jose Mercury News, a newspaper of general circulation printed and published daily in the City of San Jose, County of Santa Clara, State of California as determined by the court's decree dated June 27, 1952, Case Numbers 84096 and 84097, and that said San Jose Mercury News is and was at all times herein mentioned a newspaper of general circulation as that term is defined by Sections 6000; that at all times said newspaper has been established, printed and published in the said County and State at regular intervals for more than one year preceding the first publication of the notice herein mentioned. Said decree has not been revoked, vacated or set aside.

I declare that the notice, of which the annexed is a true printed copy, has been published in each regular or entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

05/10/2017, 05/17/2017, 05/24/2017, 05/31/2017

Dated at San Jose, California
May 31, 2017

I declare under penalty of perjury that the foregoing is true and correct.



Principal clerk of the printer and publisher of the San Jose Mercury News

Legal No. 0005953034

UNITED STATES DISTRICT COURT for the Northern District of California

Scott Johnson Plaintiff) Civil Action No.
v.) 5:16-cv-04064 HRL
Joseph P. Melehan, Trustee of the Patricia Melehan Trust; Maureen Melehan Machado, Trustee of the Patricia Melehan Trust; and Does 1-10 Defendant

SUMMONS IN A CIVIL ACTION

To: Joseph P. Melehan, Trustee of the Patricia Melehan Trust
2496 Cottle Ave, San Jose, CA 95125-4010
OR
5053 Gold Blvd, Truckee, CA 96161-4106

Maureen Melehan Machado, Trustee of the Patricia Melehan Trust
16411 Matilija Dr, Los Gatos, CA 95030-3003

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) -- or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) -- you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 or the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Mark Potter, Esq., SBN 166317
Center for Disability Access
PO Box 262490, San Diego, CA 92196-2490
9845 Erma Road, Suite 300,
San Diego, CA 92131-1084
Phone: (858) 375-7385 Fax: (888) 422-5191

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: July 20, 2016
Susan Y. Soong
/s/
Signature of Clerk or
Deputy Clerk
SJMN#5953034; May 10, 17, 24, 31, 2017

San Jose Mercury News

4 N. 2nd Street, Suite 800
San Jose, CA 95113
408-920-5332

3708504

POTTER HANDY, LLP
PO BOX 262490
SAN DIEGO, CA 92196-2490

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In the matter of

San Jose Mercury News

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to or interested in the above entitled proceedings; and was at and during all said times and still is the principal clerk of the printer and publisher of the San Jose Mercury News, a newspaper of general circulation printed and published daily in the City of San Jose, County of Santa Clara, State of California as determined by the court's decree dated June 27, 1952, Case Numbers 84096 and 84097, and that said San Jose Mercury News is and was at all times herein mentioned a newspaper of general circulation as that term is defined by Sections 6000; that at all times said newspaper has been established, printed and published in the said County and State at regular intervals for more than one year preceding the first publication of the notice herein mentioned. Said decree has not been revoked, vacated or set aside.

I declare that the notice, of which the annexed is a true printed copy, has been published in each regular or entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

05/10/2017, 05/17/2017, 05/24/2017, 05/31/2017

Dated at San Jose, California
May 31, 2017

I declare under penalty of perjury that the foregoing is true and correct.

Principal clerk of the printer and publisher of the San Jose Mercury News

Legal No. 0005953034

UNITED STATES DISTRICT COURT for the Northern District of California

Scott Johnson Plaintiff } Civil Action No.
v. Joseph P. Melehan, } 5:16-cv-04064 HRL
Trustee of the Patricia }
Melehan Trust; }
Maureen Melehan }
Machado, Trustee of the }
Patricia Melehan Trust; }
and Does 1-10 }
Defendant }

SUMMONS IN A CIVIL ACTION
To: Joseph P. Melehan, Trustee of the Patricia
Melehan Trust
2496 Cottle Ave, San Jose, CA 95125-4010
OR
5053 Gold Bnd, Truckee, CA 96161-4106

Maureen Melehan Machado, Trustee of the
Patricia Melehan Trust
16411 Matilija Dr, Los Gatos, CA 95030-3003

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) -- or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) -- you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 or the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Mark Potter, Esq., SBN 166317
Center for Disability Access
PO Box 262490, San Diego, CA 92196-2490
9845 Ermil Road, Suite 300,
San Diego, CA 92131-1084
Phone: (888) 375-7385 Fax: (888) 422-5191

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Susan Y. Soong

/s/

Signature of Clerk or
Deputy Clerk

SJMN#5953034; May 10, 17, 24, 31, 2017

San Jose Mercury News

4 N. 2nd Street, Suite 800
San Jose, CA 95113
408-920-5332

POTTER HANDY, LLP
PO BOX 262490
SAN DIEGO, CA 92196-2490

Account Number: 3708504

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*Customer's Reference SAN JOSE MERCURY NEWS
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